

## CHAPTER 7 IMPASSE PROCEDURES

**621—7.1(20) General.** Except as provided in the second paragraph of subrule 7.5(6), the rules set forth in this chapter are applicable only in the absence of an impasse agreement between the parties or the failure of either to utilize its procedures. Nothing in these rules shall be deemed to prohibit the parties, by mutual agreement, from proceeding directly to binding arbitration at any time after impasse.

**621—7.2(20) Fees of neutrals.** Transferred to 621—1.8(20,279), IAB 11/14/90, effective 12/19/90.

### **621—7.3(20) Mediation.**

**7.3(1) Request for mediation.** Either party to an impasse may request the board in writing to appoint a mediator to the impasse.

An original and one copy of the request for mediation shall be filed with the board and shall, in addition to the request for mediation, contain:

- a.* The name, address, and telephone number of the requesting party, and the name, address, business and residential telephone numbers of its bargaining representative or chairperson of its bargaining team.
- b.* The name, address, and telephone number of the opposing party to the impasse, and the name, address, business and residential telephone numbers of its bargaining representative or chairperson of its bargaining team.
- c.* A description of the collective bargaining unit or units involved and the approximate number of employees in each unit.
- d.* A concise and specific listing of the negotiated items upon which the parties have reached impasse.

**7.3(2) Date, signature and notice.** The request for mediation shall be dated and signed by an authorized representative of the requesting party. The requesting party shall also serve a copy of the request upon other parties to the negotiations either by personal delivery or by ordinary mail.

**7.3(3) Appointment of mediator.** Upon receipt of a request for mediation, the board may appoint an impartial and disinterested person as mediator of the dispute and notify all parties of the appointment of the mediator. The board shall determine the effective date of this appointment.

**7.3(4) Confidential nature of mediation.** Any information, either written or oral, disclosed by the parties to the mediator in the performance of mediation duties shall not be discussed by the mediator voluntarily or by compulsion unless approved by the parties involved.

The mediator shall not disclose any information with regard to any mediation conducted on behalf of any party to any cause pending in a proceeding before a court, board, investigatory body, arbitrator or fact finder without the written consent of the public employment relations board. Without such written consent, the mediator shall respectfully decline, by reason of this rule, to divulge any information disclosed by a party in the performance of the mediator's duties.

**7.3(5) Mediation proceedings.** The mediator may hold separate or joint meetings with the parties or their representatives, and those meetings shall not be public. Mediation meetings shall be conducted at a time and place designated by the mediator. If an impasse exists ten days after the effective date of the appointment of a mediator, the mediator shall so notify the board.

**7.3(6) Board mediator.** When the mediator is an employee of the Public Employment Relations Board, that mediator shall not participate in any contested case arising out of any transaction or occurrence relating to those mediation activities.

**7.3(7) Costs of mediation.** The mediator shall submit in writing to the board a list of fees and expenses.

**621—7.4(20) Fact-finding.**

**7.4(1) *Appointment of fact finder.*** Upon notification by the mediator that the dispute remains unresolved, or if the dispute remains unresolved ten days after the effective date of the appointment of the mediator, the board shall appoint a fact finder, except in disputes where all or a portion of the public employees in the bargaining unit are teachers licensed under Iowa Code chapter 260 and the public employer is a school district, community college, or area education agency. Where the parties and the mediator agree, the board shall appoint the mediator to serve as fact finder. The board may permit the parties to select their fact finder from a list of qualified neutrals maintained by the board. The board retains the authority to appoint a fact finder as provided in Iowa Code section 20.21.

**7.4(2) *Powers of the fact finder.*** The fact finder shall have the power to conduct a hearing, administer oaths and request the board to issue subpoenas. The subject of fact-finding shall be the impasse items unresolved by mediation. By mutual agreement, the fact finder may also assist the parties in negotiating a settlement.

**7.4(3) *Notice of hearing and exchange of proposal.*** The appointment of the fact finder shall be effective the date of the commencement of the fact-finding hearing. The board or fact finder shall establish the time, place and date of hearing and shall notify the parties of the same. The parties shall exchange copies of all proposals to be presented to the fact finder at least five days prior to the commencement of the fact-finding hearing; provided, however, that the parties may continue to bargain and nothing in this section shall preclude a party from making a concession or amending its proposals in the course of further bargaining. No party shall present a proposal to the fact finder which has not been offered to the other party in the course of negotiations.

**7.4(4) *Briefs and statements.*** The fact finder may require the parties to submit a brief or a statement on the unresolved impasse items.

**7.4(5) *Hearing.*** A fact-finding hearing shall be open to the public and shall be limited to matters which will enable the fact finder to make recommendations for settlement of the dispute.

**7.4(6) *Report of the fact finder.*** Within 15 days of appointment, the fact finder shall issue to the parties a “Report of Fact Finder” consisting of specific findings of fact concerning each impasse item, and separate therefrom, specific recommendations for resolution of each impasse item. In addition, the report shall recite the impasse items resolved by the parties during fact-finding and withdrawn from further impasse procedures. The report shall also identify the parties and their representatives and recite the time, date, place and duration of hearing sessions. The fact finder shall serve a copy of the report to the parties and file the original with the board.

**7.4(7) *Action on fact finder’s report.*** Upon receipt of the fact finder’s report, the public employer and the certified employee organization shall immediately accept the fact finder’s recommendations or shall within five days submit the fact finder’s recommendations to the governing body and members of the certified employee organization for acceptance or rejection. “Immediately” shall mean a period of not longer than 72 hours from said receipt. Notice to members of the employee organization shall be as provided in 621—subrule 6.4(20).

**7.4(8) *Publication of report by board.*** If the public employer and the employee organization fail to conclude a collective bargaining agreement ten days after their receipt of the fact finder’s report and recommendations, the board shall make the fact finder’s report and recommendations available to the public.

**7.4(9) *Cost of fact-finding.*** The fact finder shall submit to the parties a written statement of fee and expenses with a copy sent to the board. The parties shall share the costs of fact-finding equally.

**621—7.5(20) Binding arbitration.**

**7.5(1) *Request for arbitration.*** At any time following the making public by the board of the fact finder’s report and recommendations, either party to an impasse may request the board to arrange for binding arbitration. In disputes unresolved after mediation where all or a portion of the public employees in the bargaining unit are teachers licensed under Iowa Code chapter 260 and the public employer is a school district, community college, or area education association, such request may be made

not less than ten days after the effective date of the appointment of the mediator but must be made not later than April 16 of the year when the resulting collective bargaining agreement is to become effective.

**7.5(2) *Form and contents of request.*** The request for arbitration shall be in writing and shall include the name, address and signature of the requesting party and the capacity in which acting.

**7.5(3) *Service of request.*** The requesting party shall serve a copy of the request for arbitration upon the opposing party by ordinary mail.

**7.5(4) *Preliminary information.*** Within four days of the filing of the request with the board for arbitration, each party shall submit to the board the following information:

*a.* Final offers shall not be amended. A party shall not submit an offer for arbitration which has not been offered to the other party in the course of negotiations.

*b.* Two copies of the final offer of the party on each impasse item.

*c.* Two copies of the agreed upon provisions of the proposed collective bargaining agreement.

*d.* The name of the parties' selected arbitrator, or name of a single arbitrator where the parties agree to submit the dispute to a single arbitrator.

*e.* Certificate of service upon the opposing party of items "b" and "d" above.

**7.5(5) *Selection of chairperson.*** Within eight days of the filing of the request for arbitration, the arbitrators selected by each party shall attempt to agree upon the selection of a third person to act as chairperson of the arbitration panel. If the parties to the impasse fail to agree upon an arbitration chairperson within the time allotted under this rule, the board shall submit a list of three persons who have agreed to act as arbitration chairperson to the parties. The parties shall then select the arbitration chairperson from the list as provided by the Act.

**7.5(6) *Date and conduct of hearings.*** Impasse items are deemed submitted to binding arbitration on the date of the commencement of the arbitration hearing, regardless of its duration. In disputes where the public employer is a community college, or where all or a portion of the public employees in the bargaining unit are teachers licensed under Iowa Code chapter 260 and the public employer is a school district or area education agency, the submission of impasse items to binding arbitration shall occur not later than May 13 of the year when the resulting collective bargaining agreement is to become effective.

Arbitration hearings shall be open to the public and shall be recorded either by mechanized means or by a certified shorthand reporter. The arbitration hearing shall be limited to those factors listed in Iowa Code section 20.22 and such other relevant factors as may enable the arbitrator or arbitration panel to select the fact finder's recommendation (if fact-finding has taken place) or the final offer of either party for each impasse item. Arbitrators appointed pursuant to impasse procedures agreed upon by the parties shall likewise consider the factors listed in section 20.22.

**7.5(7) *Continued bargaining.*** The parties may continue to bargain on the impasse items before the arbitrator or arbitration panel until the arbitrator or arbitration panel announces its decision. Should the parties reach agreement on an impasse item, they shall immediately report their agreement to the arbitrator or arbitration panel. The arbitrator or arbitration panel shall add the agreed upon term to the collective bargaining contract and shall no longer consider the final offers of the parties or the fact finder's recommendation on that impasse item.

**7.5(8) *Report of the arbitrator or arbitration panel.*** Within 15 days after its first meeting (unless such time period is waived by the parties), the arbitrator or arbitration panel shall issue the award and serve each party and the board with a copy by ordinary mail. In reaching the panel decision, the chairperson may communicate telephonically, by mail, or may meet individually or collectively with the other panel members.

**7.5(9) *Dismissal of arbitrator or arbitration panel.*** In the event of a failure of the arbitrator or arbitration panel to issue the award within 15 days of the first meeting, the arbitrator or chairperson of the arbitration panel shall notify the board and the parties of this failure. Either party may thereafter request a new arbitrator or arbitration panel. Unless the parties agree otherwise, the procedures in subrules 7.5(1) to 7.5(5) shall apply; provided, however, that the parties may submit new final offers and

nominate different arbitrators. No arbitrator or arbitration panel shall issue a partial award except by mutual consent of the parties.

**7.5(10) Costs of arbitration.** The arbitrator shall submit to the parties a written statement of fees and expenses with a copy sent to the board. The parties shall share the costs of arbitration equally.

**621—7.6(20) Impasse procedures after completion deadline.**

**7.6(1) Objections.** Any objection by a party to the conduct of fact-finding or arbitration proceedings which will not be completed by the applicable deadline for completion of impasse procedures shall be filed with the board and served upon the other party. Such filing and service shall take place no later than 20 days prior to the applicable deadline for completion of impasse procedures, 10 days after the effective date of the appointment of the mediator, or 10 days after the filing with the board of a request for arbitration, whichever occurs later. For purposes of this rule, a request for arbitration which is filed prior to the applicable filing period specified in subrule 7.5(1) shall be deemed filed on the first day of that filing period. Failure to file an objection in a timely manner may constitute waiver of such objection, in which case the applicable deadline for completion of impasse procedures shall not apply.

**7.6(2) Response to objection.** The nonobjecting party may, within 10 days following the filing of an objection with the board, file a response asserting that, because of deliberate delay on the part of the objecting party, or unavoidable casualty, misfortune or other events beyond the parties' control, impasse procedures should continue beyond the applicable deadline. A response may additionally or alternatively assert that the deadline relied upon by the objecting party is inapplicable for reasons set forth in the response, or may assert other reasons why impasse procedures should not be terminated. If a response is not filed within the time allowed by this subrule, the board may issue an order terminating further impasse procedures.

**7.6(3) Procedure.** Filing of an objection before the applicable deadline for completion of impasse procedures shall not affect the obligation of each party to continue the impasse procedures. Further, the board may postpone hearing on the objection if it determines that a fact finder's recommendation or arbitration award may be rendered on or before the applicable deadline; in making that determination, the board will attempt to expedite any remaining impasse proceedings, but no party shall be required to waive or shorten any mandatory statutory time periods which apply to that party.

**7.6(4) Hearings.** Insofar as is applicable, hearings on a party's objection shall be conducted pursuant to 621—Chapter 2. The nonobjecting party shall proceed first and shall have the burden to show that fact-finding or arbitration should not be terminated. The board shall then issue a final order that further impasse procedures should be either terminated or completed.

**621—7.7(20) Impasse procedures for state employees.**

**7.7(1) Procedures.** Statutory procedures in Iowa Code sections 20.20 to 20.22, and independent impasse procedures negotiated by the parties must provide that the impasse be submitted to binding arbitration and the arbitration hearing concluded no later than February 28, and that any arbitrator's award will be issued on or before March 15. This rule does not preclude the parties from mutually agreeing to a date other than February 28, but the agreement must result in an arbitration award on or before March 15.

**7.7(2) Independent procedures.** Independent impasse procedures negotiated by the parties must provide that the impasse will be submitted to binding arbitration, and any hearing thereon concluded no later than February 28, and that any arbitrator's award will be issued on or before March 15.

**7.7(3) Statutory procedures.** In the absence of independent procedures, the procedures in sections 20.20 to 20.22 and rules 7.1(20) to 7.5(20) shall apply, except that a single party request for mediation must be filed no later than December 14 and the appointment of a fact finder by the board will be made by December 24, effective the date of hearing, which shall be no later than January 10. A request for binding arbitration must be filed by February 1, and any impasse must be submitted to the arbitrator(s), and hearing concluded no later than February 28.

**7.7(4) *New certifications.*** Statutory impasse procedures under these rules shall not be available if the employee organization has been certified later than December 1. This rule does not preclude the parties from negotiating independent impasse procedures if an employee organization is certified after December 1 and the procedures will result in an arbitration award on or before March 15.

**7.7(5) *Negotiability disputes.*** Disputes concerning the negotiability of any subject of bargaining shall be submitted to the board for determination pursuant to 621—subrule 6.3(20) no later than March 1. An arbitration award rendered prior to final determination of the negotiability dispute will be made conditional upon such determination. Notwithstanding the provisions of 621—subrule 2.19(20) no stay of impasse procedures will be granted during the pendency of any negotiability dispute, declaratory ruling request, or prohibited practice complaint.

This rule is intended to implement Iowa Code section 20.17.

These rules are intended to implement Iowa Code chapter 20.

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